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January 4, 1999

VIA FACSIMILECONFIDENTIAL
FOR SETTLEMENT PURPOSES ONLY
PROTECTED PURSUANT TO FRE 408Ms. Sherry Estes
Environmental Protection Agency
Office of Regional Counsel, Region V
77 West Jackson Blvd. (C-29A)
Chicago, Illinois 60604Re: Skinner Landfill

Dear Sherry:

As you requested, I am enclosing a copy of the draft de minimis settlement agreement that the Plaintiffs in the Skinner Landfill cost recovery litigation have circulated both to those parties whom the Plaintiffs believe should be eligible for de minimis settlements and to the other parties who have participated in the Skinner alternative dispute resolution process. I want to emphasize that the agreement is only a draft, has been circulated to the aforementioned parties for comment, and is subject to change based on those comments. In addition, as I have indicated, the Plaintiffs are also interested in receiving as soon as possible EPA's reaction to Plaintiffs' settlement approach.

I look forward to hearing from you soon.

Sincerely yours,

Karl S. Bourdeau

KSB:trs
Enclosure

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12/28/98

DRAFT

PRIVILEGED AND CONFIDENTIAL
ATTORNEY WORK PRODUCT

SKINNER LANDFILL DE MINIMIS SETTLEMENT AGREEMENT**Among****The Dow Chemical Company, General Electric Aircraft Engines, The Ford Motor Company, PPG Industries, Inc., Motion International, and Velsicol Chemical Corporation****and****Various De Minimis Parties****WITNESSETH:**

WHEREAS, The Dow Chemical Company, General Electric Aircraft Engines, The Ford Motor Company, PPG Industries, Inc., Morton International, and Velsicol Chemical Corporation brought actions in the United States District Court for the Southern District of Ohio captioned The Dow Chemical Company, et al. v. Acme Wrecking Co., Inc., et al., (C-1-97-307) and The Dow Chemical Company, et al. v. Sun Oil Company, et al., (C-1-97-308) against certain defendants (the "Actions");

WHEREAS, the foregoing Actions seek, among other things, cost recovery and contribution, pursuant to Sections 107(a) and 113(f) of CERCLA, 42 U.S.C. § 9607(a) and § 9613(f), for costs and expenses incurred and to be incurred in response to the alleged release or alleged threat of release of hazardous substances at or in connection with the Skinner Landfill Site in West Chester, Ohio ("the Site");

WHEREAS, the Plaintiffs and the De Minimis Parties desire to settle, dismiss and resolve certain claims among themselves arising from the alleged release or threat of release of hazardous substances at the Site and to provide the De Minimis Parties with a release from further response costs at the Site, to dismiss the De Minimis Parties from the Actions, and otherwise to minimize the De Minimis Parties' additional incurrence of transaction costs with respect to the Actions.

NOW, THEREFORE, in consideration of the promises and the mutual covenants and agreements contained herein, the parties hereto agree as follows:

DEFINITIONS:

As used in this Agreement, the term "Actions" shall mean the actions in the United States District Court for the Southern District of Ohio captioned The Dow Chemical Company, et al. v. Acme Wrecking Co., Inc., et al., (C-1-97-307) and The Dow Chemical Company, et al. v. Sun Oil Company, et al., (C-1-97-308).

As used in this Agreement, the terms "De Minimis Party" and "De Minimis Parties" shall mean any and all of those parties identified on Exhibit A attached hereto who have executed this Agreement.

As used in this Agreement, the term "Effective Date" shall be defined as provided in Section 3.1 herein.

As used in this Agreement, the term "Parties" shall mean those parties that have executed this Agreement.

As used in this Agreement, the term "Plaintiffs" shall mean the plaintiffs in the Actions.

As used in this Agreement, the term "Plaintiff De Minimis Parties" shall mean PPG Industries, Inc., Morton International, and Velsicol Chemical Corporation.

As used in this Agreement, the term "Preliminary Allocation Report" shall mean the Preliminary Allocation Report and Recommendations of John Barkett, dated October 6, 1998 and issued pursuant to the Case Management Orders in the Actions.

As used in this Agreement, the term "Primary Settling Parties" shall mean The Dow Chemical Company, the Ford Motor Company, and General Electric Aircraft Engines.

As used in this Agreement, the term "Settlement Agreement" shall mean either a de minimis consent decree with the United States or an administrative order issued by the United States Environmental Protection Agency, pursuant to Section 122(g, 4) of CERCLA.

As used in this Agreement, the term "Site" shall mean the National Priorities List ("NPL") Site known as the Skinner Landfill Superfund Site located in West Chester, Butler County, Ohio and any locations to which hazardous substances from the Site may have migrated.

Unless as otherwise provided, the terms used in this Agreement shall be as defined in Section 101 of CERCLA, 42 U.S.C. § 9601 et seq., and the statute's implementing regulations.

1. PAYMENTS

1.1 Each De Minimis Party shall be responsible for the settlement amounts set forth for such De Minimis Party in Exhibit A to this Agreement under the column "Total Amount To Be Paid." Unless otherwise indicated in Exhibit A, each De Minimis Party shall pay to the Primary Settling Parties the amount set forth for such De Minimis Party in Exhibit A.

1.2 Each De Minimis Party shall make the payment required in Section 1.1 by check made payable to [TO BE DETERMINED].

1.3 This payment shall be sent to [TO BE DETERMINED]

1.4 Each De Minimis Party shall make payment so that it is received no later than March 1, 1999. If any De Minimis Party fails to make full payment by that date, this Agreement shall, at Plaintiffs' sole discretion, be null and void.

1.5 The sums paid by the De Minimis Parties pursuant to Section 1.1 shall be deposited in one or more interest-bearing trust funds established by the Primary Settling Parties and shall be used for the payment of Plaintiffs' claims for past response costs at the Site, for additional response costs at the Site, and for such other purposes as the Primary Settling Parties shall decide in such amounts as the Primary Settling Parties shall decide.

2. OBLIGATIONS OF PRIMARY SETTTLING PARTIES AND DE MINIMIS PARTIES

2.1 On behalf of each De Minimis Party to this Agreement, the Primary Settling Parties will use best efforts to negotiate a Settlement Agreement between the United States and each such De Minimis Party that provides, among other things, (i) pursuant to Section 122(g)(2) of CERCLA, a covenant not to sue or take administrative action for each De Minimis Party under Sections 106 or 107 of CERCLA, with respect to the Site, and (ii) contribution protection to the full extent of the law under Section 122(g)(5) of CERCLA against all claims of any persons for past and future response costs incurred or to be incurred at or in connection with the Site.

2.2 If the Primary Settling Parties are successful in negotiating a Settlement Agreement with the United States that includes the provisions referenced in Section 2.1 and contains terms that are customary for CERCLA de minimis settlement agreements under the policy of U.S. Environmental Protection Agency as set forth in the December 7, 1995 Federal Register, each De Minimis Party agrees it will become a party to that agreement. Upon the effective date of such an agreement between the United States and the De Minimis Party, the De Minimis Party agrees to relinquish any claim it has to the sum paid by it pursuant to Section 1.

2.3 If the Primary Settling Parties are unsuccessful in negotiating such a Settlement Agreement, they may at any time, and must by November 30, 1999, notify the De Minimis

Parties of that fact and shall, within 30 days of such notice, return the sum paid by each De Minimis Party together with accrued interest. The Primary Settling Parties and any De Minimis Party may extend this November 30, 1999 deadline pursuant to Section 7 of this Agreement.

3. **EFFECTIVE DATE**

Except as provided in Section 4.2, this Agreement shall become effective as between each non-Plaintiff De Minimis Party and each Plaintiff on the date that it has been signed by all the Plaintiffs and that De Minimis Party. This Agreement shall become effective as between each Primary Settling Party and each Plaintiff De Minimis Party on the date that it has been signed by both all the Primary Settling Parties and that Plaintiff De Minimis Party.

4. **RELEASE AND COVENANT NOT TO SUE**

4.1 In consideration for the mutual performance of the obligations created by this Agreement, each of the Primary Settling Parties and each of the Plaintiff De Minimis Parties hereby releases, waives, and covenants not to sue for any claims, other than those specifically excluded in Section 4.3, whether presently known or unknown, contingent or real, that the Primary Settling Parties or Plaintiff De Minimis Parties ever had, now have or in the future may have against each De Minimis Party regarding the Site, or that were or that could have been asserted by the Primary Settling Parties or the Plaintiff De Minimis Parties in the Actions against any of the De Minimis Parties regarding the Site. Each of the De Minimis Parties other than the Plaintiff De Minimis Parties hereby releases, waives, and covenants not to sue for any claims, other than those specifically excluded in Section 4.3, whether presently known or unknown, contingent or real, that each De Minimis Party ever had, now has, or in the future may have against any of the Primary Settling Parties or the Plaintiff De Minimis Parties regarding the Site.

4.2 The mutual releases and covenants not to sue shall be effective with respect to each De Minimis Party and each Primary Settling Party on the date that a Settlement Agreement embodying the terms set forth in Section 2.1 of this Agreement is entered by the District Court for the Southern District of Ohio or entered into by the De Minimis Party and the U.S. Environmental Protection Agency.

4.3 Notwithstanding the foregoing, the releases and covenants set forth above will not apply to any of the following:

- A. Toxic tort claims (including, but not limited to, claims for injury or fear of injury to persons or off-Site property, medical monitoring, consequential damages, punitive damages, or loss of value of property);
- B. Any criminal action that might be commenced specifically against a party to this Agreement or its employees related to the Site;

- C. Any claims related to the recovery of natural resources damages or assessments at or caused by the Site;
- D. Any claims by the United States or the State of Ohio relating to false or incomplete responses to requests for information from the United States or the State of Ohio, if any, and directed to a party to this Agreement under the Resource Conservation and Recovery Act, 42 U.S.C. § 6901 et seq., CERCLA, 42 U.S.C. § 9601 et seq., or state law.
- E. Any claims related to the violation of any obligations under this Agreement or resulting from any false certification provided under Section 5.

5. CERTIFICATION AND NEW INFORMATION REOPENER

5.1 In executing this Agreement, each De Minimis Party certifies that it has disclosed all relevant, non-privileged documents and information within the Party's possession, custody or control regarding the Party's relevant direct and/or indirect transactions with regard to the Site as required in response to the Skinner Landfill Site Questionnaire ("the Questionnaire") under the Case Management Order ("CMO") in the Actions and/or to discovery during the Alternative Dispute Resolution ("ADR") process under the CMO, and that it has conducted a "full and thorough investigation" as defined by the Questionnaire. The Primary Settling Parties have entered into this Agreement in reliance upon these representations.

5.2 Notwithstanding any other provision in this Agreement, the Primary Settling Parties reserve the right to institute proceedings against any individual De Minimis Party in the Actions or in a new action seeking to compel that De Minimis Party to perform response actions relating to the Site and/or reimburse Primary Settling Parties for additional costs of response beyond that paid under this Agreement if information is discovered which indicates that such De Minimis Party contributed hazardous substances to the Site in greater amount or of such greater toxicity or other hazardous effects that such De Minimis Party no longer qualifies as a de minimis party at the Site under Section 122(g)(1) of CERCLA

6. COOPERATION

6.1 The Primary Settling Parties agree to use their best efforts to stay both the ADR process in the Actions and the Actions themselves as to each De Minimis Party during the pendency of negotiations for a de minimis settlement with the United States. Specifically, the Plaintiffs will file a motion to stay both the ADR Process and the Actions themselves as to the De Minimis Parties. The interim shares for the De Minimis Parties, as set forth in Appendix 4 of the Preliminary Allocation Report, will be treated as the De Minimis Parties' final allocation shares and are not subject to change, assuming that a Settlement Agreement is reached. If such

an Settlement Agreement does not become effective, De Minimis Parties will retain their rights to make additional submissions and otherwise participate in the ongoing ADR process.

6.2 Each De Minimis Party agrees to waive claims of confidentiality in the contents of the Preliminary Allocation Report to permit the Primary Settling Parties to conduct discussions with the United States Environmental Protection Agency.

7. **AMENDMENTS**

This Agreement may be amended as to any De Minimis Party only by the unanimous written consent of all of the Primary Settling Parties and such De Minimis Party.

8. **DENIAL OF LIABILITY**

This Agreement is not intended to be, and shall not be construed or interpreted to be, an admission of liability or responsibility by any of the parties hereto. The parties hereto expressly deny any and all liability or responsibility in connection with the Site.

9. **COMMUNICATIONS**

9.1 All communications with any De Minimis Party under this Agreement shall be sent to the representative designated by said De Minimis Party on the signature pages of this Agreement, or such other representative as the De Minimis Party may hereafter designate in writing.

9.2 All communications with the Primary Settling Parties under this Agreement shall be sent to Karl S. Bourdeau, Beveridge & Diamond, P.C., 1350 I St., N.W., Suite 700, Washington, DC 20007.

10. **RELATED PARTIES**

This Agreement shall be binding upon, and shall inure to the benefit of, the parties hereto and their parents, subsidiaries, divisions, departments, agencies, general partners, shareholders of each De Minimis Party (unless a shareholder is individually or potentially liable on a basis other than his or its ownership of shares in such De Minimis Party), predecessors (including but not limited to prior owners, operators, and other entities), affiliates, and their respective officers, directors, general partners, supervisors, employees, attorneys, servants, agents, and workmen, and each of them, and their respective successors, assigns, heirs, and personal representatives. The releases and covenants not to sue provided hereunder shall also inure to the benefit of the parties' respective insurers solely with respect to claims or actions solely premised upon the alleged liability of an insured party with respect to the Site and brought by a third party directly against such party's insurers, but not including, however, claims brought by a third party claiming to be an additional named insured.

11. **RELATIONSHIP OF THE PARTIES**

This Agreement does not create, and shall not be construed to create, any agency, joint venture, or partnership relationship between or among the parties.

12. **CORPORATE, PARTNERSHIP, AND MUNICIPAL AUTHORIZATION AND ENFORCEABILITY**

Each corporate party, each partnership party, and each municipal party represents and warrants to the other parties that the execution, delivery and performance of this Agreement has been duly authorized on its behalf and is within its corporate, partnership, or municipal power and authority and that the person signing on behalf of the corporation, partnership, or municipality has sufficient authority and has been duly authorized to execute this Agreement. Each party represents and warrants to the other parties that this Agreement constitutes a legal, valid, and binding obligation enforceable against such party in accordance with its terms.

13. **NO WAIVER**

The failure of a Party to insist on strict performance of any, or all, of the terms of this Agreement, or to exercise any right or remedy under this Agreement, shall not constitute a waiver or relinquishment of any nature regarding such right or remedy or any other right or remedy. No waiver of any breach or default hereunder shall be considered valid unless it is in writing and signed by the Party giving such waiver, and no such waiver shall be deemed a waiver of any subsequent breach or default of the same or similar nature.

14. **ADVICE OF COUNSEL**

Each of the Parties hereto warrants and represents that it has obtained any and all appropriate legal advice which such Party deemed necessary prior to entering into this Agreement.

15. **TITLES AND HEADINGS**

Titles and headings to sections herein are inserted merely for convenience of reference and are not intended to be a part of or to affect the meaning or interpretation of this Agreement.

16. **COUNTERPARTS**

This Agreement may be executed in one or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument.

17. **RESERVATION OF RIGHTS**

The Primary Settling Parties, Plaintiff De Minimis Parties and other De Minimis Parties specifically reserve their right to maintain all claims including, but not limited to, those for contribution or cost recovery, against entities or individuals not a signatory to this Agreement.

18. **GOVERNING LAW**

This Agreement, and any amendments hereof, shall be governed by and construed in accordance with the internal laws of the State of Ohio applicable to contracts made and to be performed therein. The Parties agree that any original action commenced by any of the parties containing a claim for recovery under, or enforcement, interpretation or modification of, this Agreement must be commenced in the United States District Court for the Southern District of Ohio.

19. **INTEGRATION**

This Agreement and the Exhibits hereto constitute the final, complete and exclusive agreement and understanding among the Parties with respect to the settlement embodied in this Agreement.

**SKINNER LANDFILL DE MINIMIS AGREEMENT
SIGNATURE PAGE**

WITNESS the execution hereof by the undersigned.

Primary Settling Parties

By: _____

Date: _____

Name: _____

Title: _____

By: _____

Date: _____

Name: _____

Title: _____

By: _____

Date: _____

Name: _____

Title: _____

Plaintiff De Minimis Parties

By: _____

Date: _____

Name: _____

Title: _____

By: _____

Date: _____

Name: _____

Title: _____

By: _____

Date: _____

Name: _____

Title: _____

De Minimis Party

By: _____

Date: _____

Name: _____

Title: _____

CONTACT OF DE MINIMIS PARTY FOR CORRESPONDENCE RELATING TO THIS AGREEMENT:

Name: _____

Address: _____

Telephone: _____

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